IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.826 OF 2005
IN
CHAMBER SUMMONS NO.540 OF 2004
IN
TESTAMENTARY SUIT NO.97 OF 1999
IN
TESTAMENTARY PETITION NO.962 OF 1997

1. Mrs.Saied Unnisa Begum & ors. Appellants
vs.
1. Jameel Ahmed Hussain & ors. Respondents
vs.
Thiru Mohammed Basheerulla (since deceased) orig.petitioner

Mr.S.A.Diwan i/b.Meghraj & Associates for the appellants.

Mr.Navin Parekh i/b. Ms.Hetal Patel for the respondent no.1.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 14th November 2005

P.C.

Heard.

2. Prior to the Chamber Summons No.540/2004 for setting aside the abatement of Testamentary Suit, the Chamber Summons No.997/2001 was taken out by the present appellants for selfsame relief i.e., for setting aside the abatement of Testamentary Suit. That Chamber Summons (997/2001) was opposed by the present respondent by filing reply. The advocate for the

appellants-applicants withdrew the said chamber summons. The learned Chamber Judge by order dated 26.6.2002 passed the following order:

> "5. Hence the chamber summons is allowed to be withdrawn and dismissed for nonprosecution and the applicants herein are directed to pay to defendants nos. 1 and 2 costs quantified at Rs.25,000/-."

3. Despite the fact that earlier chamber summons was dismissed for non-prosecution with cost of Rs.25,000/-, yet another chamber summons no.540/2004 has been taken out by the present appellants. Obviously the said attempt by the appellants was an abuse of the process of the court and the learned Chamber Judge cannot be said to have erred in dismissing the same. We do not find any merit in the contention of the learned senior counsel for the appellants that the authority of the Constituted Attorney who took out Chamber Summons No.997/2001 was terminated before 26.06.2002. We find from the proceedings that in chamber summons no.997/2001, the appellants were represented by their Advocate Mr.M.S.D'Mello. Mr.D'Mello prayed for withdrawal and the said prayer was accepted. No liberty was granted to the appellants to make fresh application.

4. Though rejection of the second chamber summons being chamber summons no.540/2004 in the facts and

circumstances by the learned chamber Judge cannot be faulted, however, we find that the imposition of cost of Rs.1 lac is harsh and needs modification. In our considered view, the appellants having already been burdened with the cost of Rs.25,000/- by the order dated 26.6.2002, the further cost of Rs.10,000/- would meet the ends of justice.

5. As in our view, the cost of Rs.10,000/- while rejecting the chamber summons meets the ends of justice, we are satisfied that proceedings by way of show cause notice under Section 12(2)(b) of the Contempt of Courts Act is unnecessary and we, accordingly, quash and set aside the show cause notice.

6. The appeal is disposed of accordingly.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)